

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION

MATTHEW BAESE,  
d/b/a Plumbing Plus,

Plaintiff,

V.

NATIONWIDE MUTUAL  
INSURANCE COMPANY, et al.,

Defendants.

Case No. 4:24 CV 1687 CDP

## MEMORANDUM AND ORDER

Presently before the Court is defendants Nationwide Mutual Insurance Company and Allied Insurance Company of America's motion to dismiss plaintiff Matthew Baese's four-count petition<sup>1</sup> under Federal Rule of Civil Procedure 12(b)(6) for failure to state a claim. In his brief in opposition to the motion, Baese addresses in substance defendants' arguments as to Counts II and IV of the petition, and he requests that I accept his voluntary dismissal without prejudice of Counts I and III. (ECF 11 at p. 4, n.1.) As defendants have served neither an answer nor a motion for summary judgment, I will construe Baese's request as a notice of voluntary dismissal under Rule 41(a)(1)(A)(i) and will dismiss those

<sup>1</sup> This action was initially filed in the Circuit Court of St. Louis County, Missouri, and was removed to this Court in December 2024. The operative pleading presently before the Court is the petition Baese filed in state court in October 2024.

claims as Baese requests.

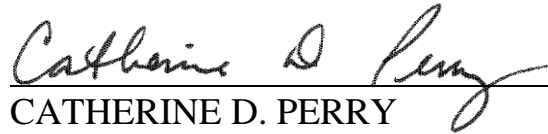
Baese's brief also includes a request, however, that I grant him leave to amend the claim raised in Count IV of the petition, that is, his claim of Negligent Infliction of Emotional Distress. (ECF 11 at p. 11.) But seeking leave to file an amended pleading by embedding the request in a brief opposing a motion to dismiss is inappropriate and does not comply with the local and federal rules. *Kitchen v. Bridgeton Landfill, LLC*, No. 4:18CV672 CDP, 2024 WL 379285, at \*12 (E.D. Mo. Feb. 1, 2024). I will therefore not consider that request and will direct Baese to seek such leave in the manner prescribed by the appropriate rules. *See* E.D. Mo. L.R. 4.07; Fed. R. Civ. P. 15. In the event Baese does not file an appropriate motion for leave to file an amended pleading, this case will proceed on Counts II and IV of Baese's state-court petition as pleaded, and I will consider defendants' motion directed thereto.

Accordingly,

**IT IS HEREBY ORDERED** that plaintiff Matthew Baese's request to dismiss Counts I and III of the petition – construed as a notice of dismissal under Federal Rule of Civil Procedure 41(a)(1)(A)(i) – is **GRANTED**, and Counts I and III of the petition are **DISMISSED without prejudice**.

**IT IS FURTHER ORDERED** that any motion for leave to amend the pleadings in this case shall comply with the relevant local and federal rules. Any

such motion(s) embedded in memoranda and not filed in compliance with the relevant rules will not be addressed.

  
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CATHERINE D. PERRY  
UNITED STATES DISTRICT JUDGE

Dated this 23rd day of January, 2025.